Supreme Court, U. S.
FILED
OCT 11 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-598

MURRAY H. MICHAEL,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

TANYA M. PLAUT
112 South Lake Avenue
Orlando, Florida 32801
Telephone: (305) 423-2100

Attorney for Petitioner

INDEX

	Page
Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit	1
Opinions Below	1-2
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	3-4
Reasons For Granting This Writ .	4-8
Conclusion	8
Certificate Of Service	9
Certificate of Attorney	10
APPENDIX:	
Opinion of the United States Court of Appeals, Third Circuit, United States v. Michael, No. 78-2545 (Aug., 1979)	a1-3
Judgment of the United States Court of Appeals, Third Circuit, United States v. Michael, No. 78-2545 (Aug., 1979)	a4
Judgment of the United States District Court for District of New Jersey, United States v. Michael, No. CR 77-00455(Nov., 1978). . .	a5

INDEX CONTINUED

APPENDIX CONTINUED: Page

Statutes Involved a6-8

Redacted Indictment, United States v. Michael, No. CR 77-00455 . . . a9-44

Jury Request No. 15 . . . . . a45

Excerpt of Trial Transcript . . . a46

Certificate Of Service a47

TABLE OF CASES AND STATUTES CITED

CASES:

Benton v. Maryland, 395 U.S. 784, (1969) 7

Cramer v. United States, 325 U.S. 1, n.45 (1945) 6

LaFont v. United States, No. 78-5930 . . . . . 4, 7

Levy v. United States, No. 78-5855 . . . . . 4, 7

Perrin v. United States, No. 78-959 . . . . . 4, 7

Pinkerton v. United States, 328 U.S. 640 (1946) 3, 6

Stromberg v. California, 283 U.S. 359 (1931) 6

United States v. Britton, 108 U.S. 199 (1883) 8

INDEX CONTINUED

CASES CONTINUED: Page

United States v. Dansker, 537 F.2d 40 (3rd Cir. 1956) 6

United States v. Knox Coal Co., 347 F.2d 33 (3rd Cir. 1965) 8

United States v. Tornabene, 222 F.2d 875 (3rd Cir. 1955). . . . 5

United States v. Weitzel, 246 U.S. 533 (1918) 5

Williams v. North Carolina, 317 U.S. 287 (1942) 7

STATUTES:

18 U.S.C. § 2 . . . . . 2, 3

18 U.S.C. § 371 . . . . . 2, 3

18 U.S.C. § 656 . . . . . 2, 3 4, 5, 6, 7, 8

18 U.S.C. § 1952 . . . . . 2, 3

28 U.S.C. § 1254(1). 2

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

MURRAY H. MICHAEL,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE THIRD CIRCUIT

_____

To the Honorable, the Chief Justice and
Associate Justices of the Supreme
Court of the United States.

Murray H. Michael, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on August 17, 1979.

OPINIONS BELOW

The opinion of the United States Court of Appeals, Third Circuit is unreported and is included in the Appendix hereto, infra, pages a1-3.
The judgment of the United States Circuit Court of Appeals, Third Circuit, is included in the Appendix hereto, infra, page a4. The judgment of the United States District Court for New

Jersey is included in the Appendix hereto, infra, page a5.

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was entered on August 17, 1979. A petition for rehearing was denied on September 12, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether the District Court erred in instructing the jury that the petitioner could be convicted as a principal of violating 18 U.S.C. § 656.

2. Whether the Court of Appeals abused its discretion by invoking the concurrent sentence rule.

3. Whether the conspiratorial objective alleged by the respondent set forth a criminal misapplication of bank funds.

STATUTES INVOLVED

18 U.S.C. § 2 (App. 6).

18 U.S.C. § 371 (App. 6).

18 U.S.C. § 656 (App. 7).

18 U.S.C. § 1952 (App. 8).

STATEMENT

Following a jury trial in the United States District Court for the District of New Jersey, petitioner was convicted on all counts of a seventeen count indictment (App. 9-44). These seventeen counts involved three different crimes, more particularly described as follows:

(a) COUNT 1: This single count charged the petitioner with conspiracy to misapply bank funds in violation of 18 U.S.C. § 371 (App. 9-15).

(b) COUNTS 2-14: These thirteen counts charged the petitioner with aiding and abetting a bank officer in the misapplication of bank funds in violation of 18 U.S.C. §§ 656 and 2 (App. 16-41).

(c) COUNTS 15-17: These final three counts charged the petitioner with crossing state lines with intent to commit commercial bribery in violation of the Travel Act, 18 U.S.C. § 1952 (App. 42-44).

At the close of all the evidence, the District Court, under the authority of Pinkerton v. United States, 328 U.S. 640 (1946), gave the jury a "derivative liability" instruction, thereby allowing the jury to convict the petitioner of violating 18 U.S.C. § 656 as a principal.

The petitioner was sentenced to seventeen concurrent five-year terms of imprisonment (App. 5). The Court of Appeals affirmed the petitioner's

conviction on Count 1, the conspiracy count, and Counts 2-14, the thirteen aiding and abetting misapplication of bank funds counts (App. 1-3). With regard to Counts 15-17, the Travel Act convictions, the Court of Appeals invoked the concurrent sentence rule and refused to pass upon these three convictions (App. 2-3). The issue involved in these three Travel Act counts, i.e., whether commercial bribery is proscribed by the Travel Act, is presently before this Court on certiorari in the cases of Perrin v. United States, No. 78-959; Levy v. United States, No. 78-5855; and LaFont v. United States, No. 78-5930.

REASONS FOR GRANTING THIS WRIT

1. The petitioner, who is not now, nor has he ever been, a bank officer, was charged in Counts 2-14 of the redacted indictment with aiding and abetting a bank officer in the misapplication of bank funds in violation of 18 U.S.C. § 656 (App. 16-41). By its terms, 18 U.S.C. § 656 may only be violated by the following individuals:

> . . . an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank, or a receiver of a national bank, or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve

> Agent or of the Board of Governors of the Federal Reserve System . . . (App. 7).

A non-bank officer may be validly convicted of conspiring to violate 18 U.S.C. § 656 and/or aiding and abetting the violation of 18 U.S.C. § 656, but this Court and the United States Circuit Court of Appeals for the Third Circuit have held that only a bank officer may be validly convicted of violating 18 U.S.C. § 656 as a principal. United States v. Weitzel, 246 U.S. 533 (1918) and United States v. Tornabene, 222 F.2d 875 (3rd Cir. 1955).

Nonetheless, in the instant case, the trial court gave the jury an instruction which allowed the petitioner to be convicted of violating 18 U.S.C. § 656 as a principal. This instruction was as follows:

> If you find that the conspiracy alleged in Count 1 has been proven, and you find that in furtherance of that conspiracy any co-conspirator committed one or more of the substantive crimes charged in Counts 2-14, then you may find the defendant, Murray H. Michael, guilty of those substantive crimes even if he did not commit them directly. This is so because a conspiracy can be viewed as a partnership in crime and each partner is responsible for the criminal acts of his co-conspirators which were committed in furtherance of the conspiracy (App. 45).

It is not unusual for this instruction to be given in multi-count indictments which contain a conspiracy count alleging that the defendants conspired to commit certain substantive crimes which are also charged in other counts of the same indictment. The instruction originated in Pinkerton v. United States, 328 U.S. 640 (1946), and is based upon the premise that the acts of one conspirator committed in furtherance of the conspiracy are the acts of all conspirators. However, in the instant case, the substantive offenses which the conspirators allegedly conspired to commit are violations of 18 U.S.C. § 656, which may only be violated by a bank officer. Thus, the petitioner may have been convicted of a crime which it is legally impossible for him to commit. After deliberations, the jury foreman simply stated: "Your Honor, we have found the Defendant guilty on all seventeen charges" (App. 46). Thus, the record of this case does not reveal whether the petitioner was validly convicted of violating 18 U.S.C. § 656 as an aider and abettor or invalidly convicted as a principal. This Court and the United States Circuit Court of Appeals for the Third Circuit have ruled that a verdict must be set aside where it is supportable on one ground but not on another, and it is impossible to tell which ground the jury selected. Stromberg v. California, 283 U.S. 359, 367-8 (1931); Cramer v. United States, 325 U.S. 1, 36 n.45 (1945); United States v. Dansker, 537 F.2d 40, 51

(3rd Cir. 1956); and Williams v. North Carolina, 317 U.S. 287, 291-2 (1942).

Accordingly, this Court should grant petitioner's writ in order to decide the important federal question of whether a non-bank officer may be convicted of violating 18 U.S.C. § 656 under the derivative liability doctrine.

2. As stated above, the Court of Appeals affirmed the petitioner's convictions of the single conspiracy count and the thirteen aiding and abetting misapplication of bank funds counts, but invoked the concurrent sentence rule and refused to pass upon Counts 15-17, the Travel Act counts (App. 1-3). Although the invocation of the concurrent sentence rule is a matter of discretion with appellate courts, this Court has stated that a review of convictions is always desirable where "adverse collateral consequences" may flow from an unreviewed conviction. Benton v. Maryland, 395 U.S. 784, 790 (1969).

The issue raised by petitioner in the three Travel Act counts, i.e., whether commercial bribery is proscribed by the Travel Act, is presently being considered by this Court in Perrin v. United States, No. 78-959; Levy v. United States, No. 78-5855; and LaFont v. United States, No. 78-5930. Thus, the likelihood of adverse collateral effects flowing from the petitioner's three unreviewed Travel Act convictions is certainly a possibility since this Court may well rule that commercial bribery

is not proscribed by the Travel Act. Accordingly, the Court of Appeals, knowing that the issue raised by petitioner was already before this Court on certiorari, abused its discretion in invoking the concurrent sentence rule and refusing to pass upon the petitioner's three counts of Travel Act convictions.

3. The conspiratorial objective alleged by the government in Count 1, the conspiracy count, does not set forth a criminal misapplication of bank funds except insofar as it tracks the statutory language of 18 U.S.C. § 656. This Court and the United States Circuit Court of Appeals for the Third Circuit have stated that a factual description of the conspiratorial objective of a given conspiracy is not satisfied merely by tracking the statutory language. United States v. Britton, 108 U.S. 199 (1883) and United States v. Knox Coal Co., 347 F.2d 33 (3rd Cir. 1965).

Thus, this portion of the decision sought to be reviewed is in conflict with decisions of this Court and the Third Circuit Court of Appeals.

CONCLUSION

In view of the vital importance of the question of federal law presented and the other considerations set forth above, it is respectfully submitted that this petition for writ of certiorari be granted.

Respectfully submitted,

TANYA M. PLAUT
112 South Lake Avenue
Orlando, Florida 32801
Telephone: (305) 423-2100

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of October, 1979, copies of this Petition for Writ of Certiorari were mailed, air mail postage prepaid to the Solicitor General, Department of Justice, Washington, D.C. 20530. I further certify that all parties required to be served have been served.

TANYA M. PLAUT

CERTIFICATE OF ATTORNEY

I, TANYA M. PLAUT, hereby certify that I am a member of the Bar of the United States Supreme Court in good standing and was admitted to practice by the Court on November 6, 1972.

TANYA M. PLAUT
Attorney

Supreme Court, U. S.
FILED
DEC 3 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

NO. 79-598

MURRAY H. MICHAEL,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MURRAY H. MICHAEL
P.O. Box 1137
Kissimmee, Florida 32741
Telephone: (305) 423-2934

Petitioner

INDEX

APPENDIX: Page

Opinion of the United States Court of Appeals, Third Circuit, United States v. Michael, No. 78-2545 (Aug., 1979) a1-3

Judgment of the United States Court of Appeals, Third Circuit, United States v. Michael, No. 78-2545 (Aug., 1979) a4

Judgment of the United States District Court for District of New Jersey, United States v. Michael, No. CR 77-00455(Nov., 1978). . . a5

Statutes Involved a6-8

Redacted Indictment, United States v. Michael, No. CR 77-00455 . . a9-44

Jury Request No. 15 . . . . . a45

Excerpt Of Trial Transcript . . a46

Certificate Of Service a47

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 78-2545

UNITED STATES OF AMERICA,
Appellee

v.

MURRAY H. MICHAEL,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

(D.C. Crim. No. 77-00455)

Argued August 8, 1979
Before ALDISERT and WEIS, Circuit Judges, and DIAMOND*, District Judge

Opinion filed
August 17, 1979

H. Franklin Robbins, Jr., Esq. (argued)
120 South Court Avenue
Suite 108
Orlando, Florida 32801
Attorney for Appellent

Robert J. Del Tufo, Esq.
United States Attorney
Samuel A. Alito, Esq. (argued)
Assistant U. S. Attorney
Federal Building
Newark, New Jersey 07101
Attorneys for Appellee

OPINION OF THE COURT

---

*Honorable Gustave Diamond, United States District Court for the Western District of Pennsylvania, sitting by designation.

PER CURIAM.

After considering the contentions raised by defendant, to wit, that

(1) Count 1 is defective because it fails to allege sufficient facts to show that the objective of the conspiracy was a criminal misapplication;

(2) defendant's conviction on Count 1 violates Wharton's Rule;

(3) with regard to count 1, the evidence established as a matter of law that there were several conspiracies rather than one;

(4) the trial court erred in denying defendant's requested jury instructions numbers 5 and 6;

(5) there was insufficient evidence to support defendant's conviction of the offense charged in count 2;

(6) the trial court abused its discretion and committed reversible error when it admitted into evidence the following:

(a) testimony of government witness Greenspon and charts he had prepared which purported to reflect that defendant had diverted loan proceeds, and

(b) testimony of government witness Angelakes who testified that defendant had never repaid the loans; and

7. the trial court erred in instructing the jury on the derivative liability doctrine;

we order that the judgment of the district court be affirmed.

In the exercise of our discretion, we do not pass upon the conviction under counts 15, 16 and 17 because the same concurrent sentences were ordered upon those counts as were imposed upon counts 1 through 14. See Barnes v. United States, 412 U.S. 837, 848 n.16 (1973); United States v. Lampley, 573 F. 2d 783 (3d Cir. 1978). Since we have not passed upon the contentions applicable to counts 15, 16, and 17, the convictions on those counts should not be considered in passing upon the defendant's parole eligibility.

The judgment of the district court as to counts 1 through 14 will be affirmed.

TO THE CLERK:

Please file the foregoing opinion.

CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE THIRD DISTRICT

UNITED STATES OF AMERICA

vs.

MICHAEL, MURRAY H.,
Appellant

(D.C. Criminal No. 77-00455)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: ALDISERT and WEIS, Circuit Judges and DIAMOND, District Judge.*

J U D G M E N T

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on August 8, 1979.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed November 3, 1978, be, and the same is hereby affirmed with respect to Counts 1 through 14.

ATTEST:
M. Elizabeth Ferguson
Chief Deputy Clerk
August 17, 1979

*Honorable Gustave Diamond, United States District Court for the Western District of Pennsylvania, sitting by designation.

DISTRICT OF NEW JERSEY

DEFENDANT: ROBERT E. MCGRATH — Cr. 77-00455

COUNSEL: ___ WITHOUT COUNSEL ... X WITH COUNSEL Joseph Forer, Esq.

PLEA: ___ GUILTY, ... ___ NOLO CONTENDERE. X NOT GUILTY

There being a finding/verdict of ___ NOT GUILTY. Defendant is discharged ... X GUILTY.

conspiracy to misapply and cause to be misapplied bank funds; misapplication of bank funds; and interstate travel with intent to facilitate bribery;

On count 1 -

Five (5) Years.

On Counts 2 to 5 inclusive, 8 to 16 inclusive, and 26 to 28 inclusive Five (5) Years on each count, and to run concurrent with Sentence imposed on Count 1, and to run concurrent with each other.

It Is Further Ordered that said Execution of Term Sentence is hereby Stayed pending Appeal.

FILED

NOV 3 1978

STATUTES INVOLVED:

18 U.S.C. § 2:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

STATUTES INVOLVED CONTINUED:

18 U.S.C. § 656:

Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, national bank or insured bank, or a receiver of a national bank, or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank or any moneys, funds, assets or securities intrusted to the custody or care of such bank, or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank and trust company which has become a member of one of the Federal Reserve banks; and "insured bank" includes any bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corp.

STATUTES INVOLVED CONTINUED:

18 U.S.C. § 1952:

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to--

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act (21 USCS § 802(b), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CRIMINAL NO. 77-445

Title 18,United States Code,
Sections 371, 656, 1952 and 2

UNITED STATES OF AMERICA

v.

MURRAY H. MICHAEL

The Grand Jury, in and for the District of New Jersey, sitting at Newark, charges that:

COUNT 1

1. At all times mentioned in this Indictment, the Trust Company of New Jersey, with its principal offices located in Jersey City, New Jersey, was a bank, the deposits of which were insured by the Federal Deposit Insurance Corporation.

2. At all times mentioned in this Indictment, the defendant,

MURRAY H. MICHAEL,

resided in the State of Florida, was a customer of the Trust Company of New Jersey, who borrowed in excess of $800,000.00 from said bank in his own name and in the names of certain business entities, of which he was a principal; including Mid-Florida Industries, Inc.; Three M Investments, Inc.; Maximum One Limited; American Housekeeping, Inc.; Gallows Development Corporation; County Wide Management, Inc.; GA Chem.,Inc.; Khem Troll,Inc.;MI Chem.,Inc.;ORL Company,

Inc.; LA Company, Inc.; JAX Chem., Inc.; Mid-State Management, Inc.; Osceola Management, Inc.

3. At all times mentioned in this Indictment, James M. Neveras, named herein as a co-conspirator but not as a defendant, was the Vice President -- Commercial Lending of the Trust Company of New Jersey with responsibility for reviewing applications for loans and other extensions of credit.

4. From at least as early as in or about January of 1974, and continuing thereafter up to and including the date of the filing of this Indictment, the exact dates being unknown to the Grand Jury, in the District of New Jersey, and elsewhere, the defendant,

MURRAY H. MICHAEL,

together with the unindicted co-conspirator, James M. Neveras, and others, did knowingly, wilfully and unlawfully combine, conspire, confederate and agree with each other, and with others, to commit certain offenses against the United States, that is, to wilfully misapply and cause to be misapplied by the unindicted co-conspirator, James M. Neveras, an amount in excess of $100.00 of the monies, funds and credits of the Trust Company of New Jersey, with the intent to injure and defraud said Bank, in violation of Title 18, United States Code, Sections 656 and 2.

5. It was a part of said conspiracy that, in order to obtain funds for the personal use of the

defendant, MURRAY H. MICHAEL, in connection with certain business ventures, the defendant, MURRAY H. MICHAEL and the unindicted co-conspirator, James M. Neveras, caused the Trust Company of New Jersey to loan approximately $833,000.00 to a series of business entities of which the defendant was a principal and to the defendant individually.

6. It was a further part of said conspiracy that in order to conceal from the Trust Company of New Jersey the true nature and purpose of the loans, referred to above in Paragraph 5 of this Count of the Indictment, the defendant and co-conspirator would:

A. Make application for loans in amounts which the defendant and co-conspirator knew could be approved by the unindicted co-conspirator, James M. Neveras, without further review by other bank officials; and

B. Obtain and renew certain of the loans based upon false, fictitious, and fraudulent documents and information.

7. It was a further part of said conspiracy that the defendant, MURRAY H. MICHAEL, would meet with James M. Neveras for the purpose of securing loans from the Trust Company of New Jersey in return for money (kickbacks) to James M. Neveras of approximately ten percent (10%) of the face value of the loans.

8. It was a further part of said conspiracy that the defendant and co-conspirator performed other acts to hide and conceal, and cause to be hidden and concealed, the purpose and the acts committed in furtherance of the conspiracy.

All in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy set forth above, and in order to effect the objects thereof, the defendant and co-conspirator did commit and cause to be committed the following overt acts, among others:

1. In or about January of 1974, the defendant, MURRAY H. MICHAEL, had a conversation with James M. Neveras in the District of New Jersey.

2. On or about January 29, 1974, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $100,000.00 in the name of MURRAY H. MICHAEL.

3. On or about February 8, 1974, the defendant, MURRAY H. MICHAEL, paid James M. Neveras a sum of $10,000.00 in the District of New Jersey.

4. On or about April 2, 1974, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $10,000.00 in the name of MidFlorida Industries, Inc.

5. On or about April 2, 1974, the defendant, MURRAY H. MICHAEL, paid James M. Neveras a sum of $10,000.00 in the District of New Jersey.

6. On or about April 25, 1974, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $100,000.00 in the name of Three M Investments, Inc.

7. On or about April 25, 1974, the defedant, MURRAY H. MICHAEL, paid James M. Neveras the sum of $10,000.00 in the District of New Jersey.

8. On or about October 29, 1974, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $50,000.00 in the name of Maximum One Limited.

9. On or about October 31, 1974, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $50,000.00 in the name of American Housekeeping, Inc.

10. On or about January 20, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $25,000.00 in the name of Gallows Development Corp.

11. On or about January 23, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $25,000.00 in the name of County-Wide Management, Inc.

12. On or about February 25, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $15,000.00 in the name of Ga. Chem., Inc.

13. On or about February 28, 1975, James M. Neveras approved a

loan by the Trust Company of New Jersey in the amount of $25,000.00 in the name of Khem-Troll, Inc.

14. On or about February 28, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $20,000.00 in the name of Mi. Chem., Inc.

15. On or about March 19, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $15,000.00 in the name of Orl. Co., Inc.

16. On or about March 19, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $25,000.00 in the name of La. Co., Inc.

17. On or about March 19, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $20,000.00 in the name of Jax. Chem., Inc.

18. On or about April 3, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $10,000.00 in the name of Orl. Co., Inc.

19. On or about April 3, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $9,000.00 in the name of Jax. Chem., Inc.

20. On or about May 16, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $10,000.00 in the name of GA. Chem., Inc.

21. On or about July 2, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the

amount of $22,000.00 in the name of Ga. Chem., Inc.

22. On or about July 11, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $5,000.00 in the name of Mi. Chem., Inc.

23. On or about December 10, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $25,000.00 in the name of Gallows Development Corp.

24. On or about December 15, 1975, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $25,000.00 in the name of County-Wide Management, Inc.

25. On or about March 24, 1976, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $48,000.00 in the name of Mid-State Management, Inc.

26. On or about March 25, 1976, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $48,000.00 in the name of Mar. Co., Inc.

27. On or about March 26, 1976, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $45,000.00 in the name of Osceola Management, Inc.

28. On or about July 9, 1976, James M. Neveras approved a loan by the Trust Company of New Jersey in the amount of $20,000.00 in the name of Mid-Florida Industries, Inc.

All of the foregoing in violation of Title 18, United States Code, Section 271.

COUNT 2

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about January 29, 1974, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-con/spirator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $100,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $100,000.00 from said bank to MURRAY H. MICHAEL in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan in contravention of the established loan policies of the Trust Company of New Jersey; and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate finanacial background information of the defendant that would be sufficient to assure that the defendant, MURRAY H. MICHAEL was financially capable of repaying the aforementioned loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure

said loan; and

d. By paying the unindicted co-conspirator, James M. Neveras, a $10,000.00 kickback in exchange for the unindicted co-conspirator James M. Neveras approving the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 3

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about April 2, 1974, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspir/ator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $100,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $100,000.00 from said bank to Mid-Florida Industries, Inc. in reckless disregard of the interest of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, Mid-Florida Industries, Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By causing the unindicted

co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company suffient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan; and

f. By paying the unindicted co-conspirator James M. Neveras a $10,000.00 kickback in exchange for the unindicted co-conspirator James M. Neveras approving the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 4

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about April 25, 1974, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspirator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $100,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $100,000.00 from said bank to Three M Investments, Inc., in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, Three M Investments, Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan; and

f. By paying the unindicted co-consipirator James M. Neveras a $10,000.00 kickback in exchange for the unindicted co-conspirator James M. Neverass approving the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 5

1. Paragraphs 1 through 8 of Count of of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about October 29, 1974, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspir/ator and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $50,000, with the intent to injure and defraud said bank, by causing the unindicted co-con/spirator James M. Neveras to grant an unsecured loan in the amount of $50,000.00 from said bank to Maxim One Limited, in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-spirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, Maximum One Limited, the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By cuasing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 6

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about January 23, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspir/ator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $25,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $25,000.00 from said bank to County-Wide Management, Inc., in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, County Wide Management, Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of

Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 7

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about February 25, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspir/ator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $15,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $15,000.00 from said bank to GA. Chem., Inc., in reckless disregard of the interests of the Trust

Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, GA. Chem., Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 8

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about February 28, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspirator James M. Neveras and others, did wilfully misapply and cuase to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $25,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $25,000.00 from said bank to Khem Troll, Inc., in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, Khem-Troll, Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of

Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned laon.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 9

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about February 28, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspirator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $20,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $20,000.00 from said bank to MI Chem., Inc., in reckless disregard of the interests of the Trust

Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, MI Chem., Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL: and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 10

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about March 19, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspir/ator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $15,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $15,000.00 from said bank to ORL COMPANY, INC. in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, ORL Company, Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL: and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to

conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 11

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about March 19, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspirator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $25,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $25,000.00 from said bank

to LA. Co. Inc.in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, LA.Co. Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL: and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 12

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about March 19, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspir/ator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $20,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $20,000.00 from said bank to JAX Chem., Inc., in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, JAX Chem., Inc. the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of

Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 14

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about April 3, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspirator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $10,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $10,000.00 from said bank to ORL Co., Inc., in reckless disregard of the interests of the Trust

Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, ORL. Co., Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 14

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about April 3, 1975, in the District of New Jersey and elsewhere, the defendant,

MURRAY H. MICHAEL

together with the unindicted co-conspirator James M. Neveras and others, did wilfully misapply and cause to be misapplied monies, funds and credits of the Trust Company of New Jersey in the amount of $5,000.00, with the intent to injure and defraud said bank, by causing the unindicted co-conspirator James M. Neveras to grant an unsecured loan in the amount of $5,000.00 from said bank to JAX Chem., Inc., in reckless disregard of the interests of the Trust Company of New Jersey as follows:

a. By causing the unindicted co-conspirator James M. Neveras to grant the aforementioned loan to a sham or dummy company, JAX Chem, Inc., the proceeds of which were for the benefit and use of the defendant, MURRAY H. MICHAEL; and

b. By causing the unindicted co-conspirator James M. Neveras to approve the aforementioned loan without securing adequate financial background information on the sham or dummy company sufficient to assure that the aforementioned sham or dummy company was financially capable of repaying said loan; and

c. By causing the unindicted co-conspirator, James M. Neveras, to

conceal from the bank and the Board of Directors the identity of the defendant, MURRAY H. MICHAEL, as the real beneficiary of the aforementioned loan, in contravention of the established loan policies of the Trust Company of New Jersey; and

d. By causing the unindicted co-conspirator, James M. Neveras, to approve the aforementioned loan without requiring adequate collateral to secure said loan; and

e. The aforementioned sham or dummy company, as the defendant, MURRAY H. MICHAEL, well knew, was financially incapable of repaying the aforementioned loan.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 15

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about February 8, 1974, the defendant

MURRAY H. MICHAEL

did wilfully travel from the State of Florida to the State of New Jersey, with intent to promote, manage, carry on, and facilitate the promoting, managing, establishing and carrying on of an unlawful activity, said unlawful activity being the crime of bribery, in violation of the laws of the State of New Jersey (N.J.S.A. §2A:911) and of the United States (Title 18, United States Code, Section 215); the said unlawful activity relating to the efforts of the defendant,

MURRAY H. MICHAEL, to influence the unindicted co-conspirator James M. Neveras, in the performance of his duties at the Trust Company of New Jersey, and thereafter did perform and attempt to perform acts to promote, manage, and carry on and facilitate the promotion, management and carrying on of said unlawful activity, by giving the unindicted co-conspirator James M. Neveras, the sum of $10,000.00 as a fee, commission and bonus, for the purpose of procuring a loan in the amount of $100,000.00 for the defendant, MURRAY H. MICHAEL, from said Bank, in the name of Murray H. Michael.

In violation of Title 18, United States Code, Sections 1952 and 2.

COUNT 16

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about April 2, 1974, the defendant

MURRAY H. MICHAEL

did wilfully travel from the State of Florida to the State of New Jersey, with intent to promote, manage, carry on, and facilitate the promoting, managing, establishing and carrying on of an unlawful activity, said unlawful activity being the crime of bribery, in violation of the laws fofthe State of New Jersey (N.J.S.A. §2A:911) and of the United States (Title 18, United States Code, Section 215); the said unlawful activity relating to the efforts of the defendant, MURRAY H. MICHAEL, to influence the unindicted co-conspirator James M.

Neveras, in the performance of his duties at the Trust Company of New Jersey, and thereafter did perform and attempt to perform acts to promote, manage, and carry on and facilitate the promotion, management and carrying on of said unlawful activity, by giving the unindicted co-conspirator James M. Neveras, the sum of $10,000.00 as a fee, commission and bonus, for the purpose of procuring a loan in the amount of $100,000.00 for the defendant, MURRAY H. MICHAEL, from said Bank, in the name of Mid-Florida Industries, Inc.

In violation of Title 18, United States Code, Sections 1952 and 2.

COUNT 17

1. Paragraphs 1 through 8 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. On or about April 25, 1974, the defendant

MURRAY H. MICHAEL

did wilfully travel from the State of Florida to the State of New Jersey, with intent to promote, manage, carry on, and facilitate the promoting, managing, establishing and carrying on of an unlawful activity, said unlawful activity being the crime of bribery, in violation of the laws fofthe State of New Jersey (N.J.S.A. §2A:911) and of the United States (Title 18, United States Code, Section 215); the said unlawful activity relating to the efforts of the defendant, MURRAY H. MICHAEL, to influence the unindicted co-conspirator James M. Neveras, in the performance of his duties

at the Trust Company of New Jersey, and thereafter did perform and attempt to perform acts to promote, manage, and carry on and facilitate the promotion, management and carrying on of said unlawful activity, by giving the unindicted co-conspirator James M. Neveras, the sum of $10,000.00 as a fee, commission and bonus, for the purpose of procuring a loan in the amount of $100,000.00 for the defendant, MURRAY H. MICHAEL, from said Bank, in the name of Three M. Investments, Inc.

In violation of Title 18, United States Code, Sections 1952 and 2.

A TRUE BILL

_____
FOREMAN

_____
ROBERT J. DEL TUFO
UNITED STATES ATTORNEY

REQUEST NO. 15

If you find that the conspiracy alleged in Count 1 has been proven, and you find that in furtherance of that conspiracy any c0-conspirator committed one or more of the substantive crimes charged in Counts 2 through 17, then you may find the Defendant, Murray H. Michael, guilty of those substantive crimes even if he did not commit them directly. This is so because a conspiracy can be viewed as a partnership in crime and each partner is responsible for the crimainal acts of his co-conspirators which were committed in furtherance of the conspiracy.

Pinkerton v. United States, 328 U. S. 640 (1946).

(Jury enters courtroom at 5:02 p.m.)

THE CLERK: May I proceed, your Honor?
THE COURT: Yes, if you will please.
THE CLERK: I will take the roll call. Respond to your name as being "here' or "present".

(At which time the clerk called the roll of the jury and all were present.)

THE CLERK: Members of the jury, have you agreed upon a unanimous verdict? Who shall speak for you, your foreperson?
MRS. PERRONG: Yes, we have.
THE CLERK: Mrs. Perrong?
MRS. PERRONG: Yes, we have.
THE CLERK: Please stand.
How say you, do you find the defendant guilty or not guilty as he stands charged on Count 1?
MRS. PERRONG: Guilty.
Your Honor, we have found the defendant guilt on all seventeen charges.
THE COURT: All right, thank you very much, madam forelady.
MR. FORER: I ask that the jury be polled, your Honor.
THE COURT: They will be.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 1979, copies of this Appendix to Petition for Writ of Certiorari were mailed, air mail, postage prepaid to the Solicitor General Department of Justice, Washington, D.C. 20530. I further certify that all parties required to be served have been served.

_____
MURRAY H. MICHAEL
P.O. Box 1137
Kissimmee, Florida 32741
Telephone: (305) 423-2934

Petitioner

Supreme Court, U.S.
FILED
DEC 19 1979
MICHAEL RODAK, JR., CLERK

No. 79-598

In the Supreme Court of the United States

OCTOBER TERM, 1979

MURRAY H. MICHAEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

TERENCE J. LYNAM
Attorney
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-598

MURRAY H. MICHAEL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. a1-a3) is not reported. The opinion of the district court on the sufficiency of the indictment is reported at 456 F. Supp. 335.

JURISDICTION

The judgment of the court of appeals (Pet. App. a4) was entered on August 17, 1979. A petition for rehearing was denied on September 12, 1979. The petition for a writ of certiorari was filed on October 11, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS REPRESENTED

1. Whether, in a prosecution for aiding and abetting the misapplication of bank funds, the instructions permitted the jury to convict petitioner on the erroneous theory that he had directly violated 18 U.S.C. 656 while acting as a bank officer.

2. Whether the concurrent sentence doctrine was properly invoked by the court of appeals.

3. Whether the conspiracy count of the indictment charged an offense.

STATEMENT

Petitioner was charged in a 17-count indictment returned in the United States District Court for the District of New Jersey with various offenses growing out of the payment of kickbacks to secure a series of bank loans (Pet. App. a9-a44). Count one charged that petitioner conspired with James M. Neveras, a former officer of the Trust Company of New Jersey, to misapply bank funds, in violation of 18 U.S.C. 371 and 656. Counts two through fourteen charged that petitioner misapplied bank funds when he secured various loans from the Trust Company of New Jersey, in violation of 18 U.S.C. 656 and 2. Counts fifteen through seventeen charged that he travelled in interstate commerce with the intent to commit bribery, in violation of 18 U.S.C. 1952 and 2. Following a jury trial, petitioner was convicted as charged.[1] He was sentenced to concurrent terms of five years' imprisonment. The court of appeals affirmed (Pet. App. a1-a3).

---

[1]Neveras pleaded guilty to conspiracy to misapply bank funds and testified as a government witness at trial.

1. Petitioner, a real estate developer, obtained loans from the Trust Company of New Jersey (TCNJ), an FDIC-insured bank in Jersey City, New Jersey, by paying kickbacks to Neveras, then a vice-president in the bank's commercial lending department. The money was obtained ostensibly to finish construction on a partially completed motel in Orlando, Florida (Tr. 4.26-4.28), and it was given to petitioner without the investigation that sound banking practices dictate (Tr. 2.6-2.8).

In January 1974, Neveras first arranged and approved an unsecured $100,000 loan from TCNJ to petitioner (Tr. 1.195), in exchange for which he received a $10,000 kickback from petitioner (Tr. 1.199, 2.6). In April 1974, petitioner again paid a $10,000 kickback to Neveras in exchange for his approval of a $100,000 loan to a corporation controlled by petitioner (Tr. 2.88-2.92). Later that month petitioner paid another $10,000 kickback in exchange for a third $100,000 loan (Tr. 2,100-2.104).

In October 1974, when payments became delinquent on all three loans (Tr. 2.107), two more unsecured loans were issued to "dummy" corporations controlled by petitioner, and funds from these loans were used to make payments on the first three loans (Tr. 2.107-2.108, 2.115-2.116). Thereafter, throughout 1975 and the first seven months of 1976, other new loans were approved by Neveras in order to assist petitioner in repaying previous loans and to finance other projects of petitioner (Tr. 2.119-2.164).

In all, petitioner obtained $833,000 in loans and was unable to repay $593,000 in principal. He converted more than $250,000 of the loans received to cash (Tr. 5.17-5.18, 5.124, 5.125).

ARGUMENT

1. Petitioner contends that, although he was not a bank officer, the trial court permitted the jury to convict him on counts two through fourteen on a factual finding that he was a bank officer who misapplied funds of the bank, in violation of 18 U.S.C. 656. This contention lacks merit.

The statute, 18 U.S.C. 656, proscribes misapplication of bank funds by "an officer, director, agent or employee of, or [a person who is] connected in any capacity with * * *" an insured bank. Since petitioner did not occupy any position with TCNJ, he obviously could not, on his own, violate this statute. As part of its instructions, the court charged the jury (Tr. 7.175-7.176):

> If you find that the conspiracy alleged in Count 1 has been proven, and you find that in furtherance of that conspiracy either of the co-conspirators committed one or more of the substantive crimes charged in Counts 2 through 14, then you may find the defendant, Murray H. Michael, guilty of those substantive crimes even if he did not commit them directly. This is so because a conspiracy can be viewed as a partnership in crime and each partner is responsible for the criminal acts of his co-conspirators which were committed in furtherance of the conspiracy.

This instruction, contrary to petitioner's contention, would not have led the jury to conclude that petitioner could be convicted of the substantive offenses on the theory that he was acting as a bank officer under the statute. While the instruction is inartfully phrased, it was obviously designed to inform the jury that it could convict petitioner even if he did not directly commit the

substantive offenses.[2] Significantly, nothing in the evidence suggests that petitioner acted directly to misapply the funds. Rather, the evidence of conspiracy was that petitioner paid substantial kickbacks to a bank official for loans; the natural consequence of such payments was the misapplication of bank funds by the official. There was simply no possibility that the jury, on the evidence before it, could have convicted on the hypothesis that petitioner was himself a bank officer who had misapplied the bank's funds. There was, therefore, no prejudicial error in this instruction.[3]

2. Petitioner contends that the court of appeals abused its discretion by invoking the concurrent sentence doctrine and declining to pass upon his conviction under the three Travel Act counts (Counts 15-17). Petitioner's attack on his conviction on those counts rested on his argument that the Travel Act does not proscribe

---

[2]It is well settled that a defendant can be convicted of aiding and abetting in or conspiring to commit an offense that he is personally incapable of committing owing to his exclusion from the class whose conduct is proscribed by the statute. *United States* v. *Tokoph*, 514 F. 2d 597, 602 (10th Cir. 1975). See also *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 224-225 n.59 (1940); *United States* v. *Rabinowich*, 238 U.S. 78, 86 (1915); *United States* v. *Lester*, 363 F. 2d 68 (6th Cir. 1966), cert. denied, 385 U.S. 1002 (1967).

[3]The cases cited by petitioner are inapposite. *United States* v. *Weitzel*, 246 U.S. 533 (1918), held only that a receiver of a bank cannot be convicted of violating Rev. Stat. 5209 (now 18 U.S.C. 656). Since the Court had no occasion to consider whether a receiver could be convicted of conspiring with others to violate the statute, it did not decide how a jury should be instructed on such a conspiracy count. *United States* v. *Tornabene*, 222 F. 2d 875 (3r Cir. 1955), held that a nonbank officer may be convicted of aiding and abetting a misapplication of bank funds only if a bank officer actually commits the substantive offense. *Tornabene* does not address the *Pinkerton* instruction about which petitioner complains.

commercial bribery. Since this Court has now held to the contrary in *Perrin* v. *United States*, No. 78-959 (Nov. 27, 1979), petitioner's attack on these convictions plainly lacks merit. It is thus immaterial whether the concurrent sentence doctrine was properly applied in this case.

3. Petitioner's final argument is that the conspiracy count (Pet. App. a9-a15) does not charge an offense because it merely tracks the language of 18 U.S.C. 656 and thus does not give a satisfactory description of the conspiratorial objective.

"A conspiracy indictment is sufficient if it sets out the essential elements of the charge and lists overt acts committed in furtherance of the conspiracy." *United States* v. *Evans*, 572 F. 2d 455, 483 (5th Cir.), cert. denied, 439 U.S. 856, 858, 870 (1978). As this Court stated in *Wong Tai* v. *United States*, 273 U.S. 77, 81 (1927): "It is well settled that in an indictment for conspiring to commit an offense—in which the conspiracy is the gist of the crime—it is not necessary to allege with technical precision all the elements essential to the commission of the offense which is the object of the conspiracy * * *."

This standard is clearly satisfied here. Count one (Pet. App. a9-a11) charges that petitioner borrowed in excess of $800,000 from TCNJ in his own name and in the name of certain identified business entities of which he was a principal, that he conspired with Neveras to cause Neveras to willfully misapply funds and credits of the bank with intent to injure and defraud the bank in violation of 18 U.S.C. 656 and 2, that these loan proceeds were obtained by petitioner and Neveras based on "false, fictitious, and fraudulent documents and information," and that in return for approving loans

Neveras received kickbacks of approximately 10% of their face value. Finally, Count one alleges (Pet. App. a11) that petitioner and Neveras performed other acts to conceal the acts committed in furtherance of the conspiracy.

This statement of conspiratorial purpose, quite apart from the allegations of the substantive counts, sets forth the objective of willful misapplication of bank funds through loans to a named debtor (a petitioner-controlled corporation) made without regard to its financial capabilities, with an intention of looking for repayment, if at all, only from a third party (petitioner) who actually received the proceeds and to whom the bank was unwilling to grant a formal loan.[4]

In any event, it is well established that "it is not necessary that the object of [a] conspiracy be described in the detail which would be required to charge a violation of the substantive offense." *United States* v. *Evans*, *supra*, 572 F. 2d at 483. Various courts of appeals have held that an indictment using the language of 18 U.S.C. 656 is sufficient to charge the offense of bank fund misapplication. *United States* v. *Mann*, 517 F. 2d 259, 268 (5th Cir. 1975), cert. denied, 423 U.S. 1087 (1976); *United States* v. *Tokoph*, 514 F. 2d 597, 605-606 (10th Cir. 1975); *United States* v. *Llaca Orbiz*, 513 F. 2d

---

[4]See the district court's discussion of this point in *United States* v. *Michael*, 456 F. Supp. 335, 343-346 (D.N.J. 1978).

816, 818 (1st Cir.), cert. denied, 423 U.S. 861 (1975); *United States* v. *Fortunato*, 402 F. 2d 79, 81 (2d Cir. 1968), cert. denied, 394 U.S. 933 (1969).[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

TERENCE J. LYNAM
Attorney

DECEMBER 1979

---

[5]The cases cited by petitioner (Pet. 8) do not hold that the requirement of a conspiratorial objective is not satisfied merely by tracking the statutory language. *United States* v. *Britton*, 108 U.S. 199 (1883), is apposite only in its statement of the general proposition that "[a] conspiracy must be sufficiently charged." 108 U.S. at 205. *United States* v. *Knox Coal Company*, 347 F. 2d 33 (3d Cir.), cert. denied, 382 U.S. 904 (1965), actually supports the government's position. It held that when, as here, the conspiratorial objective is "an offense [under] another section of the Criminal Code, every element of that offense need not be set forth" in the conspiracy count. 347 F. 2d at 38.

DOJ-1979-12